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CORY SPENCER, DIANA MILENA
REED, and COASTAL PROTECTION
RANGERS, INC.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

CORY SPENCER, an individual;
DIANA MILENA REED, an
individual; and COASTAL
PROTECTION RANGERS, INC., a
California non-profit public benefit
corporation,

Plaintiffs.

CASE NO. 2:16-cv-02129-SJO (RAOx)

**DECLARATION OF KURT A.
FRANKLIN IN OPPOSITION TO
DEFENDANTS CITY OF PALOS
VERDES ESTATES AND CHIEF OF
POLICE JEFF KEPLEY'S MOTION
FOR SUMMARY JUDGMENT OR, IN
THE ALTERNATIVE, SUMMARY
ADJUDICATION**

Case No. 2:16-cv-02129-SJO (RAOx)

DECL. OF K. FRANKLIN IN OPP. TO DEFTS. CITY OF PALOS VERDES ESTATES AND CHIEF OF POLICE
JEFF KEPLEY'S MOT. FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, SUMMARY ADJUD.

1
2 v.

Judge: Hon. S. James Otero
Date: September 5, 2017
Time: 10:00 a.m.
Crtrm.: 10C

3 LUNADA BAY BOYS; THE
4 INDIVIDUAL MEMBERS OF THE
5 LUNADA BAY BOYS, including but
6 not limited to SANG LEE, BRANT
7 BLAKEMAN, ALAN JOHNSTON
8 AKA JALIAN JOHNSTON,
9 MICHAEL RAE PAPAYANS,
10 ANGELO FERRARA, FRANK
11 FERRARA, CHARLIE FERRARA,
and N. F.; CITY OF PALOS VERDES
ESTATES; CHIEF OF POLICE JEFF
KEPLEY, in his representative
capacity; and DOES 1-10,

Complaint Filed: March 29, 2016
Trial Date: November 7, 2017

12 Defendants.
13
14

15 I, Kurt A. Franklin, declare as follows:

16 1. I am an attorney duly admitted to practice before this Court. I am a
17 partner with Hanson Bridgett LLP, attorneys of record for Plaintiffs CORY
18 SPENCER, DIANA MILENA REED, and COASTAL PROTECTION RANGERS,
19 INC. I have personal knowledge of the facts set forth herein, except as to those
20 stated on information and belief and, as to those, I am informed and believe them to
21 be true. If called as a witness, I could and would competently testify to the matters
22 stated herein.

23 2. Attached hereto as Exhibit 1 is a true and correct copy of select
24 excerpts of the deposition transcript of **Steve Barber** taken in the instant action on
25 June 22, 2017.

26 3. Attached hereto as Exhibit 2 is a true and correct copy of select
27 excerpts of the deposition transcript of **Tony Best** (Person Most Knowledgeable for
28

1 Defendant City of Palos Verdes Estates) taken in the instant action on July 21, 2017.

2 4. Attached hereto as Exhibit 3 is a true and correct copy of select
3 excerpts of the deposition transcript of **Defendant Brant Blakeman** taken in the
4 instant action on November 21, 2016.

5 5. Attached hereto as Exhibit 4 is a true and correct copy of select
6 excerpts of the deposition transcript of **Ken Claypool** taken in the instant action on
7 June 13, 2017.

8 6. Attached hereto as Exhibit 5 is a true and correct copy of select
9 excerpts of the deposition transcript of **Anton Dahlerbruch** taken in the instant
10 action on November 18, 2016.

11 7. Attached hereto as Exhibit 6 is a true and correct copy of select
12 excerpts of the deposition transcript of **Anton Dahlerbruch (Person Most**
13 **Knowledgeable for Defendant City of Palos Verdes Estates)** taken in the instant
14 action on July 13, 2017.

15 8. Attached hereto as Exhibit 7 is a true and correct copy of select
16 excerpts of the deposition transcript of **Defendant Charles Ferrara** taken in the
17 instant action on July 7, 2017.

18 9. Attached hereto as Exhibit 8 is a true and correct copy of select
19 excerpts of the deposition transcript of **Defendant Chief of Police Jeff Kepley**
20 taken in the instant action on October 10, 2016.

21 10. Attached hereto as Exhibit 9 is a true and correct copy of select
22 excerpts of the deposition transcript of **Sheri Repp Loadsman (Person Most**
23 **Knowledgeable for Defendant City of Palos Verdes Estates)** taken in the instant
24 action on July 13, 2017.

25 11. Attached hereto as Exhibit 10 is a true and correct copy of select
26 redacted excerpts of the deposition transcript of **N.F.** taken in the instant action on
27 July 6, 2017.

1 12. Attached hereto as Exhibit 11 is a true and correct copy of select
2 excerpts of the deposition transcript of **Catherine Placek** taken in the instant action
3 on June 23, 2017.

4 13. Attached hereto as Exhibit 12 is a true and correct copy of select
5 excerpts of the deposition transcript of **Plaintiff Diana Milena Reed** taken in the
6 instant action on October 24 and 25, 2016.

7 14. Attached hereto as Exhibit 13 is a true and correct copy of select
8 excerpts of the deposition transcript of **Plaintiff Cory Spencer** taken in the instant
9 action on October 11, 2016.

10 15. Attached hereto as Exhibit 14 is a true and correct copy of select
11 excerpts of the deposition transcript of **Christopher Taloa** taken in the instant
12 action on January 5, 2017.

13 16. Exhibit 15 is a true and correct redacted copy of Defendant Alan
14 Johnston's Cell Record Detail. An unredacted copy of Exhibit 15 is submitted with
15 Plaintiffs' Application for Leave to File Under Seal.

16 17. Attached hereto as Exhibit 16 is a true and correct copy of a transcript
17 of selected excerpts from the DVD of Swell Life of Browne and Peter McCollum.
18 The DVD is being lodged separately with the Court. I caused my office to
19 transcribe statements made by Peter McCollum in the documentary.

20 18. My co-counsel in this matter, Victor Otten, is lodging a true and correct
21 copy of the documentary The Swell Life (2001), Darren McInerney, Director, which
22 documents surfing localism. A true and correct copy of this video, bates
23 PLTF002249, is Exhibit 34 to this declaration and is lodged with the court. *See*
24 Plaintiffs' Notice of Lodging. In particular, Plaintiffs are lodging excerpts from the
25 Swell Life video showing declarations against interest made by Peter McCollum and
26 Chief Timm Browne as identified more specifically in Paragraphs 19 and 20.

27 19. Lunada Bay local Peter McCollum on video shown in the documentary
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1 (5:14 seconds to 5:31, and 15:05 to 15:19) Witness Geoffrey Hagins observed Mr.
2 McCollum on this day, and authenticates the video excerpts accurately portray what
3 happened that day. *See* Hagins Decl. ¶¶ 3, 6, and 7. Further, I caused my office to
4 transcribe what Mr. McCollum says in the video, which is: "He won't surf here
5 again, though, got it? Got it? You got that, son? You got it? Hey, hey, I'm touching
6 nobody. Nothing. But you won't surf here again, boy. You won't surf here again.
7 Fuck that, fuck you guys! I've been here too long to take this shit." (5:14 seconds to
8 5:31). And, "How many guys are at Malibu right now, huh? How many fucking
9 guys are at Malibu, huh? (I don't know.) Did you ever notice we've done a good
10 thing here, haven't we? It's pretty nice and pretty, huh? (It's beautiful.) It's beautiful!
11 And so when you exploit it, we'll thank you." (15:05 to 15:19).

12 20. Lunada Bay Chief of Police Timm Browne, is also depicted in the
13 documentary. I caused my office to transcribe what Chief Browne says in the video,
14 which is: "In 1995, there were some incidents actually provoked by outsiders who
15 brought news crews with them. Umm, they had it planned and then provoked
16 incidents that are actually captured on local television news spots. People here do
17 not like outsiders in general. Umm, I mean, they pay a price to live here. Umm,
18 they have beautiful views of the ocean from most of the homes in the City. Umm,
19 so, uh, they are protective of their community as a whole, umm, I mean surfers or
20 non-surfers." (13:44 to 14:39) And, "The people that live in and around that area and
21 then surf there do not want pictures taken because it is a gem. They don't want
22 people to know where it specifically it is. If everybody knows where it is, then we'll
23 have all 8 million surfers from Los Angeles in that little tiny cove?" (14:37 to 15:04)
24 During the deposition of Tony Best, I showed him this same video and he was able
25 to confirm it was Timm Brown, whom he had worked under. *See* PAMF 163, and
26 Best Depo. 124:22-25, 125:1-25, 126:1-25, 127:1-13.

27 21. From The Los Angeles Times Website, I downloaded the following
28

1 articles, true and correct copies of which are attached as Exhibits A and B to
2 Plaintiffs' Request for Judicial Notice, as specifically detailed in Paragraphs 22 and
3 23.

4 22. The Los Angeles Times, July 5, 1991, Tim Waters, "The Hazards of
5 Surfing Lunada Bay: Peninsula: Outsiders run the risk of being pelted with rocks or
6 having their vehicles vandalized. The locals offer no apologies for treating the
7 public area as if it was their own." This article is available online through The Los
8 Angeles Times website at: [http://articles.latimes.com/1991-07-05/local/me-
9 1657_1_lunada-bay](http://articles.latimes.com/1991-07-05/local/me-1657_1_lunada-bay);

10 23. The Los Angeles Times, May 8, 1995, Tony Perry, Turf Wars Spoil
11 Sanctity of Southland Surf Beaches : Violence: Popularity leads to crowding.
12 Charges that one group attacked outsiders highlight the problem." This article is
13 available online through The Los Angeles Times website at:
14 http://articles.latimes.com/1995-05-08/news/mn-63795_1_lunada-bay.

15 24. From Bureau of Justice Statistics, I downloaded a December 29, 2016
16 report by Todd D. Minton and Zhen Zeng, Ph.D. from the Bureau of Justice
17 Statistics entitled "Jail Inmates In 2015." This report is available online through the
18 Bureau of Justice Statistics website at:
19 <https://www.bjs.gov/index.cfm?ty=pbdetail&iid=5872> A true and correct copy of
20 this report is attached as Exhibits C to Plaintiffs' Request for Judicial Notice.

21 25. My co-counsel in this matter, Victor Otten, is lodging a true and correct
22 copy video taken by Defendant Brant Blakeman on February 13, 2016 [Bates No.
23 BB081 and BB082]. I have transcribed the audio from this video, a true and correct
24 copy of which is as attached as Exhibit 17, to this Declaration. *See* Plaintiffs' Notice
25 of Lodging.

26 26. News correspondent Frank Stoltze of AirTalk Radio Los Angeles,
27 KPCC 89.3, interviewed Defendant Chief of Police Jeff Kepley regarding localism
28

1 in Lunada Bay. The radio interview is titled "How surfer 'gang mentality' is keeping
2 people off some SoCal beaches," and dated July 17, 2015. The full radio interview
3 is available online through Southern California Public Radio (SCPR) at:
4 [http://www.scpr.org/programs/airtalk/2015/07/17/43700/how-surfer-gang-mentality-](http://www.scpr.org/programs/airtalk/2015/07/17/43700/how-surfer-gang-mentality-is-keeping-people-off-so/)
5 [is-keeping-people-off-so/](http://www.scpr.org/programs/airtalk/2015/07/17/43700/how-surfer-gang-mentality-is-keeping-people-off-so/). I have downloaded this radio interview for use in this
6 lawsuit. I caused my office to transcribe what Chief Kepley says in the radio
7 interview (2:57 through 7:40). Next, during the deposition of the City's PMK, Tony
8 Best, who has worked with Chief Kepley since Chief Kepley started as Chief for
9 City of Palos Verdes Estates, Captain Best authenticated it was Chief Kepley in the
10 radio interview. *See* PAMF 171, Best Depo. 149:5-11. A true and correct copy of
11 Mr. Stoltze's July 17, 2015 radio interview of Chief Jeff Kepley is attached as
12 Exhibit 18 to this declaration and is lodged with this Court by my co-counsel in this
13 matter, Victor Otten. *See* Plaintiffs' Notice of Lodging.

14 27. After the filing of this lawsuit, CBS News produced a nationwide news
15 story on Lunada Bay, led by correspondent Carter Evans. My co-counsel Victor
16 Otten downloaded this story for use in this lawsuit, sharing it with my office. In the
17 Carter Evans' story, at timestamp 2:47, a Palos Verdes Estates Police Officer is seen
18 telling Mr. Evans and his crew: "We cannot send officers down there all the time,
19 you know? But if something happens, you have a cell phone, too?" During the
20 deposition of the City's PMK, Tony Best, who works with Sargent Luke Hellinga,
21 Captain Best verified it is Sergeant Hellinga who is making the statement to Mr.
22 Evans. A true and correct copy of this video, bates PLTF002055, is Exhibit 35 to
23 this declaration and is lodged with the Court by my co-counsel in this matter, Victor
24 Otten. *See* PAMF 171, Best Depo. 140:9-25, 141:1-3; *see also* Plaintiffs' Notice of
25 Lodging.

26 28. My co-counsel Victor Otten obtained video of Officer Aaron Belda
27 interacting with an event participant at Coastal Protection Rangers' 2017 Martin
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1 Luther King Jr., whom was intending to file a complaint about violation of the local
2 surfing ordinance. In it, Officer Belda tells the event participant: "I'm not a surfer,
3 so I don't understand surfing etiquette. And I don't even know what dropping in is."
4 A true and correct copy of this video, bates PLTF002250, is Exhibit 36 to this
5 declaration and is lodged with the Court. *See* PAMF 187, Best Depo. 130:23-25,
6 131:1-3, 131:18-24; *see also* Plaintiffs' Notice of Lodging.

7 29. Attached hereto as Exhibit 19 is a true and correct copy of the Palos
8 Verdes Estates Police Department Investigation Narrative (City Doc. 152).

9 30. Attached hereto as Exhibit 20 is a true and correct copy of the Palos
10 Verdes Estates Police Department Office Report for Incident 16-00720 (City
11 Doc. 185-187).

12 31. Attached hereto as Exhibit 21 is a true and correct copy of the
13 "Summary of Palos Verdes Estates Administrative Investigation" marked
14 "CONFIDENTIAL" (City Bates. Nos. CITY7087-CITY7096). *See also* Plaintiffs'
15 Application for Leave to File Under Seal.

16 32. In reference to paragraph 21 above, on Thursday, July 27, 2017, with
17 my partner Samantha Wolff, we called attorney Jacob Song who represents the City
18 of Palos Verdes Estates, asking to meet and confer over our request that City
19 document Nos. CITY7087-CITY7096 not be marked "CONFIDENTIAL" as we
20 intended to use this in our opposition to the City's Motion for Summary Judgment
21 and we did not believe it was properly marked. This Document is titled "Summary
22 of Palos Verdes Estates Administrative Investigation" and is an external
23 investigation of the planned-but-cancelled "compromised" investigation identified in
24 the City's SSUF 82, which was set to take place on February 13, 2016 but "leaked"
25 the day before. In it, a resident (and Bay Boy) is identified as persuading the City
26 Manager to cancel the investigation the very next day. And it identifies potential
27 internal and external sources of the "leak." Because the City's attorney did not get
28

1 back to us, we are submitting this document in conjunction with an Application for
2 Leave to File Documents Under Seal, consistent with the parties' stipulated
3 protective order. Plaintiffs do not believe the City has properly marked this
4 "CONFIDENTIAL" and ask that this document be made public. *See also* Plaintiffs'
5 Application for Leave to File Under Seal.

6 33. Attached hereto as Exhibit 22 is a true and correct copy of the City of
7 Palos Verdes Estates and Chief of Police Jeff Kepley's Responses in Opposition to
8 the Separate Statement of Undisputed [sic] Facts In Support of Plaintiffs' Motion for
9 Class Certification [Docket No. 189].

10 34. Attached hereto as Exhibit 23 is a true and correct copy of the
11 Declaration of Mark Slatten in Support of Plaintiffs' Motion for Class Certification
12 [Docket No. 159-6].

13 35. Attached hereto as Exhibit 24 is a true and correct copy of the
14 Declaration of Diana Milena Reed in Support of Plaintiffs' Motion for Class
15 Certification [Docket No. 159-5].

16 36. Attached hereto as Exhibit 25 is a true and correct copy of the
17 Declaration of Cory Spencer in Support of Plaintiffs' Motion for Class Certification
18 [Docket No. 159-4].

19 37. Attached hereto as Exhibit 26 is a true and correct copy of the Expert
20 Declaration of Peter Neushul in Support of Plaintiffs' Motion for Class Certification
21 [Docket No. 184-1].

22 38. Attached hereto as Exhibit 27 is a true and correct copy of the
23 Declaration of Amin Akhavan in Support of Plaintiffs' Motion for Class
24 Certification [Docket No. 171].

25 39. Attached hereto as Exhibit 28 is a true and correct copy of the
26 Declaration of Christopher Taloa in Support of Plaintiffs' Motion for Class
27 Certification [Docket No. 159-10].

1 40. Attached hereto as Exhibit 29 is a true and correct copy of the
2 Declaration of Jordan Wright Spencer [sic] in Support of Plaintiffs' Motion for Class
3 Certification [Docket No. 159-9].

4 41. Attached hereto as Exhibit 30 is a true and correct copy of the
5 Declaration of Ricardo G. Pastor in Support of Plaintiff's Motion for Class
6 Certification [Docket No. 175].

7 42. Attached hereto as Exhibit 31 is a true and correct copy of the
8 Declaration of Philip King in Support of Plaintiffs' Motion for Class Certification
9 [Docket No. 184-2].

10 43. Attached hereto as Exhibit 32 is a true and correct copy of the
11 Declaration of Philip King in Support of Plaintiffs' Opposition to Defendants City of
12 Palos Verdes Estates and Chief of Police Jeff Kepley's Motion to Strike the
13 Declaration of Philip King [Docket No. 216-1].

14 44. Attached hereto as Exhibit 33 is a true and correct copy of Defendant
15 City of Palos Verdes Estates' Responses to Interrogatories Set One Propounded by
16 Plaintiff Cory Spencer.

17 45. Two reporters from The Guardian recorded their interactions with local
18 surfers at Lunada Bay, including Defendant Sang Lee, and Palos Verdes Estates
19 Police Department Service Officer Catherine Placek. This video was reported by
20 The Guardian, R. Carroll and N. Smith, on Monday, May 18, 2015, titled "Surfer
21 turf wars in California: 'We'll burn you every single wave'" and was also produced
22 in discovery by Plaintiffs at Bates PLTF002054. In the video, at 1:08 to 1:35 secs.,
23 Service Officer Placek states: "We know all of them. They are infamous around
24 here. They are pretty much grown men in little mens' mindset. They don't like
25 anyone that's not one of the Bay Boys surfing down there. It literally is like a game
26 with kids on a schoolyard to them. And they don't want you playing on their swing
27 set. But, you know, it is what it is. If you feel uncomfortable, you know, then don't
28

1 do it." See PAMF 166. Placek's statements were authenticated by her in terms of
2 substance, meaning, and intent. See PAMF 166, 171, 177 and 195. A true and
3 correct copy of The Guardian, R. Carroll and N. Smith, Monday, May 18, 2015,
4 "Surfer turf wars in California: 'We'll burn you every single wave'" is attached as
5 Exhibit 37 and can also be found on The Guardian website at
6 [https://www.theguardian.com/travel/video/2015/may/18/california-surf-wars-](https://www.theguardian.com/travel/video/2015/may/18/california-surf-wars-lunada-bay-localism-video)
7 [lunada-bay-localism-video](https://www.theguardian.com/travel/video/2015/may/18/california-surf-wars-lunada-bay-localism-video).

8
9 I declare under penalty of perjury under the laws of the United States of
10 America that the foregoing is true and correct.

11 Executed on this 1st day of August, 2017, at San Francisco, California.

12
13 /s/ Kurt A. Franklin
14 Kurt A. Franklin